108-208

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 197.

JONATHAN KIRKBRIDE, PLAINTIFF IN ERROR,

vs.

LAFAYETTE COUNTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED MARCH 11, 1880.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court for the eastern division of the western district of Missouri, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November term, 1879, thereof, between Jonathan Kirkbride, plaintiff, and Lafayette County, defendant, a manifest error hath happened, to the great damage of the said Kirkbride, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-nine.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the eastern division of the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—

A. KREKEL, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this fifth day of March, A. D. 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) No. 580. United States circuit court, eastern division of the western district of Missouri. Jonathan Kirkbride vs. Lafayette County. Writ of error to the circuit court of the United States for the eastern division of the western district of Missouri. Returned and filed, day of , 187 . , clerk.

3 The United States of America to Lafayette County, in the State of Missouri, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern division of the western district of Missouri, wherein Jonathan Kirkbride is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, judge of the circuit court of the *circuit court of the* United States for the western district of Missouri, this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-nine.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the within citation this 18th day of Nov'r, A. D. 1879.

ALEX. GRAVES,
Attorney for Defendant in Error.

(Indorsed:) United States circuit court, eastern division of the western district of Missouri. Jonathan Kirkbride vs. Lafayette County. Citation. Filed , 187 . , clerk.

5 UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, sct:

Pleas before the honorable circuit court of the United States in and for the eastern division of the western district of Missouri, at the November term, A. D. 1879, in case of Jonathan Kirkbride, plaintiff, vs. Lafayette County, defendant.

Be it remembered that heretofore, to wit, on the 23d day of October, A. D. 1875, there was filed in the clerk's office of the circuit court of the United States in and for the western district of Missouri a petition in the words and figures following, to wit:

Petition.

In the circuit court of the United States for the western district of Missouri, November term, A. D. 1875.

JONATHAN KIRKBRIDE, PLAINTIFF,
vs.
LAFAYETTE COUNTY, DEFENDANT.

Plaintiff in the above-entitled cause states that he is a citizen of the

State of Pennsylvania; that the defendant herein is a municipal corporation, created by and existing under and in virtue of the constitution and laws of the State of Missouri, and is one of the counties of and in said State of Missouri, and is composed wholly of citizens of said State of Missouri, and is situate within the western district of Missouri.

Plaintiff further states that on the fifteenth day of March, 1869, the defendant issued and delivered to the St. Louis and St. Joseph Railroad Company its several bonds of that date numbered from one to , and, except in respect to numbers, each of said bonds were of the same
6 tenor and effect, and by each of which said defendant acknowledged itself to be indebted and promised for value to pay to the said St. Louis & St. Joseph Railroad Company (a railroad corporation duly incorporated under the laws of the State of Missouri and doing business in said State), or bearer, ten years after the date thereof, five hundreds dollars, with interest thereon from date at the rate of ten per centum per annum, on presentation of the annual coupons thereto attached at the banking house of Alexander Mitchell & Co., in the city of Lexington and State of Missouri.

Plaintiff further states the fact to be, and it is so stated on the face of said bonds, that they were issued under and pursuant to an order of the county court of Lafayette County, by authority of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and by authority of "a vote of the people taken May 23d, 1868."

That said bonds were signed by Ninean W. Letton, presiding justice of the county court of Lafayette County, Missouri, and countersigned, sealed, and attested by William Hixon, clerk of the county court of said Lafayette County, and that each of said coupons was signed by said William Hixon as said clerk.

Plaintiff further states that thereupon said bonds were delivered to the said St. Louis & St. Joseph Railroad Company; and that afterwards, and before the maturity thereof plaintiff became the purchaser for value of those of said bonds numbered from forty-nine (49) to sixty-two (62), both included, and also of bond numbered thirty-eight, and that plaintiff is now the legal owner, holder, and bearer of said bonds and coupons.

7 Plaintiff further states that on the fifteenth day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon, which had been attached to said bond No. 49, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1873, fifty dollars, being annual interest on bond No. 49, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the fifteenth day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 49, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1874, fifty dollars, being annual interest on bond No. 49, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the fifteenth day of March, 1875, the plaintiffs pre-

sented to the defendant the annual interest coupon which had been attached to said bond No. 49, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1875, fifty dollars, being annual interest on bond No. 49, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the fifteenth day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 50, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1873, fifty dollars, being annual interest on bond No. 50, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the fifteenth day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 50, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1874, fifty dollars, being annual interest on bond No. 50, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the fifteenth day of March, 1875, the plaintffs presented to the defendant the annual interest coupon which had been attached to said bond No. 50, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1875, fifty dollars, being annual interest on bond No. 50, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the fifteenth day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 51, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1873, fifty dollars, being annual interest on bond No. 51, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 51, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 51, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 51, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 51, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 52, whereby defendant promised that it would pay to the

bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 52, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

8 And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 52, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 52, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 52, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 52, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 53, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 53, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 53, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 53, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 53, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 53, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 54, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 54, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 54, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875 [4], fifty dollars, being annual interest on bond No. 54, for $500, and demanded payment of the

same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond, No. 54, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 54, for $500, and demanded payment for the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon, which had been attached to said bond No. 55, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 55, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 55, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 55, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

9 And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 55, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 55, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 56, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 56, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 56, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 56, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 56, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 56, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 57, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 57, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 57, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 57, for $500, and demanded payment of the same but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 57, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 57, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 58, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 58, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 58, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 58, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon, which had been attached to said bond No. 58, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 58, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 59, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 59, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented

to the defendant the annual interest coupon which had been attached to said bond No. 59, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 59, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 59, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 59, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 60, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 60, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 60, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 60, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 60, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 60, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 61, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 61, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 61, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 61, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 61, whereby defendant promised that it would pay to the

bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 61, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 62, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 62, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

11 And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 62, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 62, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 62, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 62, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 38, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, fifty dollars, being annual interest on bond No. 38, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendants the annual interest coupon which had been attached to said bond No. 38, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, fifty dollars, being annual interest on bond No. 38, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 38, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, fifty dollars, being annual interest on bond No. 38, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

Wherefore plaintiff says the defendant is indebted to him on account of the overdue coupons hereinbefore mentioned in the sum of two thousand two hundred & fifty dollars, for which and interest thereon down to the rendition of judgment in this case he prays judgment.

For another and further cause of action plaintiff states that on the fif-

teenth day of March, 1869, the defendant issued and delivered to the St. Louis and St. Joseph Railroad Company its several bonds of that date numbered from one to , and except in respect to numbers each of said bonds were of the same tenor and effect, and by each of which said defendant acknowledged itself to be indebted, and promised for value to pay to the said St. Louis & St. Joseph Railroad Company (a railroad corporation duly incorporated under the laws of the State of Missouri and doing business in said State) or bearer ten years after the date thereof one hundred dollars, with interest thereon from date at the rate of ten per centum per annum, on presentation of the annual coupons thereto
12 attached, at the banking house of Alexander, Mitchell & Co., in the city of Lexington and State of Missouri.

Plaintiff further states the fact to be, and it is so stated on the face of said bonds, that they were issued under and pursuant to an order of the county court of La Fayette County, by authority of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and by authority of "a vote of the people taken May 23d, 1868."

That said bonds were signed by Ninean W. Letton, presiding justice of the county court of Lafayette County, Missouri, and countersigned, sealed, and attested by William Hixon, clerk of the county court of said La Fayette County, and that each of said coupons was signed by said William Hixon as said clerk.

Plaintiff further states that thereupon said bonds were delivered to the said St. Louis & St. Joseph Railroad Company, and that afterwards and before the maturity thereof plaintiff became the purchaser for value of those of said bonds numbered one hundred and nineteen (119), one hundred and twenty (120), one hundred and twenty-one (121), one hundred and twenty-two (122), and one hundred and twenty-three (123), and that plaintiff is now the legal owner, holder, and bearer of said bonds and coupons.

Plaintiff further states—

13 That on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 121, whereby defendant promised that it would pay to the bearer thereof on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 121, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 121, whereby defendant promised that it would pay to the bearer hereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 121, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 122, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 122, for $100, and demanded payment of the same,

but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 122, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 122, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 122, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 122, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 123, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 123, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 123, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 123, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 119, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 119, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 119, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 119, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiff presented to the defendant the annual interest coupon which had been attached to said bond No. 119, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 119, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

14 And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 120, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 120, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 120, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 120, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 120, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 120, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 121, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 121, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 123, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 123, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

Wherefore plaintiff states that the defendant is justly indebted to him, on account of the coupons hereinbefore mentioned, in the sum of one hundred and fifty dollars; for which sum and all interest thereon, down to the rendition of judgment, plaintiff prays judgment.

For another and further cause of action, plaintiff states that on the second day of November, 1868, the defendant issued and delivered to the St. Louis and St. Joseph Railroad Company its several bonds of that date numbered from one to ; and, except in respect to numbers, each of said bonds were of the same tenor and effect, and by each of which said defendant acknowledged itself to be indebted, and promised for value to pay to the St. Louis & St. Joseph Railroad Company (a railroad corporation duly incorporated under the laws of the State of Missouri and doing buri-

15 ness in said State), or bearer, ten years after the date thereof, one thousand dollars, with interest thereon from date, at the rate of ten per centum per annum, on presentation of the annual coupons

thereto attached at the banking-house of Alexander Mitchell & Co., in the city of Lexington and State of Missouri.

Plaintiff further states the fact to be, and it is so stated on the face of said bonds, that they were issued under and pursuant to an order of the county court of La Fayette County, by authority of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroad[s] in the State of Missouri," and by authority of a vote of the people taken May 23d, 1868.

That said bonds were signed by Jesse Schofield, presiding justice of the county court of La Fayette County, Missouri, and countersigned, sealed, and attested by William Hixon, clerk of the county court of said La Fayette county, and that each of said coupons was signed by said William Hixon as said clerk.

Plaintiff further states that thereupon said bonds were delivered to the said St. Louis & St. Joseph Railroad Company, and that afterwards, and before the maturity thereof, plaintiff became the purchaser for value of those of said bonds numbered thirteen (13), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), & thirty-three (33), and that plaintiff is now the legal owner, holder, and bearer of said bonds and coupons.

Plaintiff further states—

That on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 13, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 13, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 13, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 13, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 13, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 13, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

16 And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 24, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 24, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 24, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 24, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon, which had been attached to said bond No. 24, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 24, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 25, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 25, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 25, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 25, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon, which had been attached to said bond No. 25, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 25, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 26, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 26, for $1,000, and demanded payment of the same, but defendent wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 26, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 26, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to

said bond No. 26, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 26, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 27, whereby defendant promised that it would pay to the bearer thereof on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 27, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewithfiled.

17 And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 27, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 27, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 27, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 27, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon, which had been attached to said bond No. 28, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 28, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 28, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 28, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 28, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 28, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 29, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 29, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 29, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 29, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 29, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 29, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 30, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 30, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 30, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 30, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

18 And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 30, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 30, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 31, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred

dollars, being annual interest on bond No. 31, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 31, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 31, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 31, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 31, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 32, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 32, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 32, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 32, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 32, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 32, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 33, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 33, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay

the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 33, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 33, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

And also, that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 33, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 33, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Said coupon is herewith filed.

19 Wherefore plaintiff states that the defendant is justly indebted to him, on account of the coupons hereinbefore mentioned, in the sum of three thousand three hundred dollars; for which sum, together with all interest thereon down to the rendition of judgment herein, he prays judgment.

EWING & SMITH,
For Plaintiff.

And thereupon, on the 26th of October, there was issued out of said clerk's office of said court a summons in the words and figures following, to wit:

Summons.

WESTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to summon Lafayette County, in the State of Missouri, a citizen of said district, that it be and appear before the honorable circuit court of the United States for the western district of Missouri, on the first day of the next term thereof, to be holden at the city of Jefferson, in and for said district, on the 15th day of November next, then and there to answer the complaint of Jonathan Kirkbride, a citizen of the State of Pennsylvania, as set forth in the petition filed in said court on the 23d day of October, A. D. eighteen hundred and seventy-five. Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 26th day of October, A. D. eighteen hundred and seventy-five. Issued at office, in the city of Jefferson, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk of said Court.

Upon said summons the marshal of the United States for said district made the following return, to wit:

20 *Marshal's return.*

Executed this writ by delivering a true copy of the within and foregoing summons, together with a copy of the petition filed in this cause, to William B. Steele, county clerk of the county of Lafayette, Missouri, on the 26th day of October, 1875, at and in the county of Cole, western district of Missouri.

GEO. SMITH, *U. S. Marshal,*
By S. O. TENNY, *Deputy.*

Marshal's fees for service of writ, $2.00.

And afterwards, at a regular stated of the circuit court of the United States in and for the western district of Missouri, begun and holden on the third Monday of November, A. D. 1875, at the city of Jefferson, in said district, the following proceedings were had in this case on the 15th day of November, in said last-mentioned year, to wit:

JONATHAN KIRKBRIDE
vs. } 580.
LAFAYETTE COUNTY.

Answer filed.

This day comes the defendant, by Alexander Graves, its attorney, and files answer to plaintiff's petition herein.

And said answer, so filed as aforesaid, is in the words and figures following, to wit:

Answer.

In the circuit court of the United States for the western district of Missouri, November term, A. D. 1875.

JONATHAN KIRKBRIDE, PLAINTIFF,
vs.
LAFAYETTE COUNTY, DEFENDANT.

The defendant, for answer to petition of plaintiff in the above-entitled cause, admits that he is a citizen of the State of Pennsylvania; that the defendant herein is a municipal corporation created by and existing under and in virtue of the constitution and laws of the State of Missouri,
21 and is one of the counties of and in said State of Missouri, and is composed wholly of citizens of said State of Missouri, and is situate within the western district of Missouri.

Defendant *defendant* denies that on the fifteenth day of March, 1869, the defendant issued and delivered to the St. Louis and St. Joseph Railroad Company its several bonds of that date, numbered from one to , and, except in respect to numbers, each of said bonds were of the same tenor and effect; and defendant denies that by each of which said defendant acknowledged itself to be indebted, and promised, for value, to pay to the said St. Louis and St. Joseph Railroad Company (a railroad corporation duly incorporated under the laws of the State of Missouri, and doing

business in said State), or bearer, ten years after the date thereof, five hundred dollars, with interest thereon from date, at the rate of ten per centum per annum, on presentation of the annual coupons thereto attached at the banking-house of Alexander Mitchell & Co., in the city of Lexington and State of Missouri.

Defendant further denies the fact to be, and denies that it is so stated on the face of said bonds, that they were "issued under and pursuant to an order of the county court of Lafayette County, by authority of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and by authority of 'a vote of the people taken May 23d, 1868.'"

Denies that said pretended bonds were signed by Ninian W. Letton, presiding justice of the county court of Lafayette County, Missouri, and countersigned, sealed, and attested by William Hixon, clerk of the
22 county court of said Lafayette County, and that each of said coupons was signed by said William Hixon as said clerk.

Defendant further denies that thereupon said pretended bonds were de-delivered to the said St. Louis and St. Joseph Railroad Company, and denies that afterwards, and before the maturity thereof, plaintiff became the purchaser, for value, of those of said pretended bonds numbered from forty-nine (49) to sixty-two (62), both included, and also of bond numbered thirty-eight, and denies that plaintiff is now the legal owner, holder, and bearer of said pretended bonds and coupons.

23 Defendant further denies that on the fifteenth day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 49, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1873, fifty dollars, being annual interest on bond No. 49, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 49, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1874, fifty dollars, being annual interest on bond No. 49, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 49, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1875, fifty dollars, being annual interest on bond No. 49, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 50, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1873, fifty dollars, being annual interest on bond No. 50, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 50, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1874, fifty dollars, being annual interest on bond No. 50, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 50, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1875, fifty dollars, being annual interest on bond No. 50, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 51, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1873, fifty dollars, being annual interest on bond No. 51, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the fifteenth day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 51, whereby defendant promised that it would pay to the bearer thereof, on the fifteenth day of March, 1874, fifty dollars, being annual interest on bond No. 51, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 51, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 51, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 52, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 52, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

24 And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 52, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 52, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs pre-

sented to the defendant the annual interest coupon which had been attached to said bond No. 52, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 52, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 53, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 53, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 53, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 53, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 53, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 53, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 54, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 54, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 54, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 54, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 54, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 54, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 55, whereby defendant promised that it would pay to the

bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 55, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 55, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 55, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

25 And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 55, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 55, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 26, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 56, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 56, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 56, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 56, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 56, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 57, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 57, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been at-

to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 61, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 62, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, fifty dollars, being annual interest on bond No. 62, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

27 And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 62, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, fifty dollars, being annual interest on bond No. 62, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 62, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, fifty dollars, being annual interest on bond No. 62, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 38, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, fifty dollars, being annual interest on bond No. 38, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 38, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, fifty dollars, being annual interest on bond No. 38, for $500, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 38, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, fifty dollars, being annual interest on bond No. 38, for $500, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

Defendant denies that the defendant is indebted to plaintiff on account of the alleged overdue coupons hereinbefore mentioned in the sum of two thousand two hundred and fifty dollars or any other sum.

Defendant, for answer to the other and further cause of action in plaintiff's petition, denies that on the fifteenth day of March, 1869, the defendant issued and delivered to the St. Louis and St. Joseph Railroad Company, its several bonds of that date, numbered from one to , and, except in respect to numbers, each of said bonds were of the same tenor and effect; and denies that by each of which said defendant acknowledged itself to be indebted and promised for value to pay to the said St. Louis and St. Joseph Railroad Company (a railroad corporation duly incorporated under the laws of the State of Missouri, and doing business in said State), or bearer ten years after the date thereof, one hundred dollars, with interest thereon from date at the rate of ten per centum per annum, on presentation of the annual coupons thereto attached, at the banking-house of Alexander Mitchell & Co., in the city of Lexington, and State of Missouri.

28 Defendant further denies the fact to be and denies it is so stated on the face of said bonds, that they were issued under and pursuant to an order of the county court of Lafayette County by authority of an act of the generally assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and by authority of "a vote of the people taken May 23d, 1868."

Denies that said bonds were signed by Ninian W. Letton, presiding justice of the county court of Lafayette County, Missouri, and countersigned, sealed, and attested by William Hixon, clerk of the county court of said Lafayette County, and each of said coupons was signed by William Hixon, as said clerk.

Defendant further denies that thereupon said bonds were delivered to the said St. Louis and St. Joseph Railroad Company; and denies that, afterwards and before the maturity thereof, plaintiff became the purchaser for value of those of said bonds numbered one hundred and nineteen (119), one hundred and twenty (120), one hundred and twenty-one (121), one hundred and twenty-two (122), & one hundred and twenty-three (123), and denies that plaintiff is now the legal owner, holder, and bearer of said bonds and coupons.

29 Defendant denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 121, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 121, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 121, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 121, for $100, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 122, whereby defendant promised that it would pay to

the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 122, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 122, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 122, for $100, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 122, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 122, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 123, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 123, for $100, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 123, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 123, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 119, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 119, for $100, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 119, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 119, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 119, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 119, for $100, and demanded payment of the

same, and defendant wholly neglected and refused to pay the same, and the same remain wholly unpaid. Denies said coupon is therewith filed.

30 And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 120, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 120, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 120, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1874, ten dollars, being annual interest on bond No. 120, for $100, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 120, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 120, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 121, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1873, ten dollars, being annual interest on bond No. 121, for $100, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 15th day of March, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 123, whereby defendant promised that it would pay to the bearer thereof, on the 15th day of March, 1875, ten dollars, being annual interest on bond No. 123, for $100, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

31 Defendant, for answer to the other and further cause of action in the petition of plaintiff, denies that on the second day of November, 1868, the defendant issued and delivered to the St. Louis and St. Joseph Railroad Company its several bonds of that date, numbered from one to , and, except in respect to numbers, each of said bonds were of the same tenor and effect; and denies that by each of which the defendant acknowledged itself to be indebted and promised for value to pay to the said St. Louis and St. Joseph Railroad Company (a railroad corporation duly incorporated under the laws of the State of Missouri and doing business in said State), or bearer, ten years after the date thereof, one thousand dollars with interest thereon from date at the rate of ten per centum per annum on presentation of the annual coupons thereto attached at the banking-house of Alexander Mitchell & Co., in the city of Lexington and State of Missouri.

Defendant further denies the fact to be, and denies it is so stated on the face of said bonds, that they were issued under and pursuant to an order of the county court of Lafayette County by authority of an act of the general assembly of the State of Missouri, approved March 23, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and by authority of a vote of the people taken May 23, 1868.

Defendant denies that said bonds were signed by Ninian W. Letton, presiding justice of the county court of Lafayette County, Missouri, and countersigned, sealed, and attested by William Hixon, clerk of the county court of said Lafayette County, and denies that each of said coupons was signed by said William Hixon as said clerk.

32 Defendant further denies that thereupon said bonds were delivered to the said St. Louis and St. Joseph Railroad Company, and denies that afterwards, and before the maturity thereof, plaintiff became the purchaser for value of those of said bonds numbered thirteen (13), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), and thirty-three (33), and denies that plaintiff is now the legal owner, holder, and bearer of said bonds and coupons.

33 Defendant denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 13, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 13, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 13, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 13, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 13, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 13, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 24, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 24, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 24, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 24, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 24, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 24, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 25, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 25, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 25, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 25, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 25, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 25, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 26, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 26, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

34 And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 26, whereby defendant promised that

it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 26, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 26, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 26, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 27, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 27, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 27, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 27, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 27, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 27, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 28, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 28, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 28, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 28, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay

the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 28, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 28, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 29, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 29, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 29, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 29, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

35 And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 29, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 29, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 30, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 30, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 30, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 30, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 30, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 30, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 31, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 31, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 31, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 31, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 31, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 31, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 32, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 32, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 32, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 32, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 32, whereby defendant promised that it would

pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 32, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

36 And also denies that on the 1st day of September, 1873, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 33, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1873, one hundred dollars, being annual interest on bond No. 33, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1874, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 33, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1874, one hundred dollars, being annual interest on bond No. 33, for $1,000, and demanded payment of the same, but defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

And also denies that on the 1st day of September, 1875, the plaintiffs presented to the defendant the annual interest coupon which had been attached to said bond No. 33, whereby defendant promised that it would pay to the bearer thereof, on the 1st day of September, 1875, one hundred dollars, being annual interest on bond No. 33, for $1,000, and demanded payment of the same, and defendant wholly neglected and refused to pay the same, and the same remains wholly unpaid. Denies said coupon is therewith filed.

Defendant denies that the defendant is justly indebted to the plaintiff on account of the coupons set forth in said last count in the sum of $3,300, or any other sum whatever.

And defendant, further answering the plaintiffs' petition and each and every cause of action therein stated, avers the fact to be that the said St. Louis and St. Joseph Railroad Company is one organized under the laws of Missouri, and that its power and authority to mark out, construct, and lay railroad track, and all franchise and power to operate a line of railroad under the law, is limited to be used and exercised only in counties north of the Missouri River, which is a navigable water of the United States, and that accordingly the entire line of the said railroad originates and terminates north of the said Missouri River, and that said company, at and before and since the date of the issuance of said pretended bonds described in said petition, had no franchise or corporate power by law authorizing any extension of said road, or any part thereof, south of the said Missouri River, and that said line of road terminates in Ray County, which lies wholly north of the said river. And defendant further states the defendant, the said County of Lafayette, lies and is situate wholly south of said river, and by it separated from the said railroad. Defendant avers that the said act of the general assembly, of March 23, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," did not authorize the said county court to make the said sub-

scription to the capital stock of the said railroad company, nor did said act authorize the issuance of said bonds in payment of any such
37 alleged subscription; and said bonds are issued without any power or authority in law, inasmuch the said railroad company did not propose, and in law had no right, power, or authority, to construct its said line of road, or any part thereof, into, near, or through the said county of Lafayette, or any part of said county, and said bonds are further violative of law inasmuch as the same, on their face and by virtue of the recitals therein contained, purport to be the bonds of the said County of Lafayette, issued for and on its own behalf, & not bonds issued to the said company in the name of said county for and on behalf of any municipal township in said Lafayette County; and defendant further avers that said bonds were issued without any subscription having been made by the said county of Lafayette to the capital stock of said railroad company authorizing the same to be issued. Wherefore the defendant saith that said pretended bonds & the coupons thereto attached, being the same sued on, are wholly illegal, being unauthorized by law and issued without any power so to do, and are null & void, for which plaintiff ought not to have and maintain this action against defendant.

LAFAYETTE COUNTY, *Defendant.*
By ALEX. GRAVES, *its Attorney.*

And afterwards, at said last mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 30th day of November, A. D. 1875, to wit:

JONATHAN KIRKBRIDE
vs. } 580.
LAFAYETTE COUNTY.

This day come the parties by their attorneys, the plaintiff by H. Clay Ewing, esq., and the defendant by Alexander Graves, esq., and thereupon, by consent of parties, it is ordered that plaintiff have leave to reply in sixty days, and that this cause be continued.

And afterwards, at said last mentioned regular stated term of said
38 circuit court, the following further proceedings were had in said case on the 11th day of December, A. D. 1875, to wit:

JONATHAN KIRKBRIDE
vs. } 580.
LAFAYETTE COUNTY.

Reply filed.

This day comes the plaintiff by H. Clay Ewing, esq., his attorney, and files a reply to the answer herein.

And said replication so filed as aforesaid is in the words and figures following, to wit:

Reply.

Circuit court of the United States, western dist. Mo.

JONATHAN KIRKBRIDE, PLAINTIFF,
against
LAFAYETTE COUNTY, DEFENDANT. } No. 550.

And now comes the plaintiff by his attorneys, and for replication to the answer of the defendant alleges that the act of the legislature of the State of Missouri of March 23d, 1868, does and did authorize the defendant to subscribe to the capital stock of the St. Louis and St. Joseph Railroad Company, under certain circumstances, for a municipal township in said county, and to issue county bonds in payment thereof.

Plaintiff alleges that said railroad company had the power and authority, under said act of 1868, and did thereunder propose and undertake to construct its line of road near or through the township of Lexington, in said county, and in pursuance of said proposal and undertaking did construct a part of the line of its said road "near" said Lexington Township, to wit, to the north bank of the Missouri River in Ray County, immediately opposite said township and the city of Lexington, the county seat of the defendant, and located in said township, and not exceeding five hundred yards from the said township.

Plaintiff denies that said bonds are void, because they purport to be the bonds of the defendant.

39 Plaintiff denies that said defendant made no subscription to the capital stock of said railroad company, but alleges the fact to be that that question was submitted to a vote of the qualified voters of said Lexington Township as provided by law, and that in pursuance of said vote the said defendant did subscribe to the capital stock of said company, and did issue and deliver said bonds in payment of said subscription, and the same are valid and binding, and plaintiff prays judgment as in his petition.

JONATHAN KIRKBRIDE,
By EWING & SMITH.

And afterwards, at a regular stated term of the circuit court in and for said district, begun and held on the third Monday in April, A. D. 1876, at Jefferson City, in said district, the following further proceedings were had in this case on the 25th day of April, in said year, to wit:

JONATHAN KIRKBRIDE
vs. } 580.
LAFAYETTE COUNTY.

Jury waiver filed.

This day come the parties by their attorneys, the plaintiff by H. Clay Ewing, esq., and the defendant by Alexander Graves, esq., and thereupon a stipulation is filed herein waiving a jury trial, and this case being regularly called for trial the same is tried by the court sitting as a jury, and after argument of counsel submitted on the pleadings and proofs.

And said jury waiver so filed as aforesaid is in the words and figures following, to wit:

Jury waiver.

United States circuit court for the western district Missouri.

JONATHAN KIRKBRIDE
vs.
LAFAYETTE COUNTY.

And now comes the plaintiff by its attorneys, Ewing & Smith, and the defendant by its attorney, Alexander Graves, and waive a jury for the trial of this case, and submit the same to the court.

EWING & SMITH,
For Plaintiff.
ALEX. GRAVES,
Att'y for Def't.

And afterwards, at a regular stated term of said circuit court, begun and holden on the third Monday of November, A. D. 1876, at the city of Jefferson, in said district, the following further proceedings were had in this case on the 25th day of November, A. D. 1876, to wit:

JONATHAN KIRKBRIDE
vs. 580.
LAFAYETTE COUNTY.

Judgment for def't.

This cause having been heretofore submitted to the court on the pleadings and proofs, and being now fully advised in the premises, the court finds the issues for the defendant. It is therefore considered by the court that the plaintiff take nothing by his writ, and that the defendant go hence without day and recover its costs of the plaintiff, Jonathan Kirkbride, and have execution therefor.

And afterwards, at said last mentioned regular stated term of said circuit court, the following further proceedings were had in this case on the 28th day of November, A. D. 1876, to wit:

JONATHAN KIRKBRIDE
vs. 580.
LAFAYETTE COUNTY.

Motion for new trial filed.

This day comes the plaintiff by W. S. Pope, esq., his attorney, and files motion for new trial.

Said motion for new trial so filed as aforesaid is in the words and figures following, to wit:

Motion for new trial.

United States circuit court, western dist. Missouri.

JONATHAN KIRKBRIDE, PLT'F,
against
LAFAYETTE COUNTY, DEF'T.

41 And now comes the plaintiff by his attorney, Ewing, Smith & Pope, and moves the court to set aside the verdict and judgment of the court in this case and grant him a new trial, for the following reasons:

I. The verdict is not warranted by the facts in the case.

II. The verdict is not authorized by the law.

III. The verdict and judgment of the court is not warranted by the law and the evidence.

IV. The court erred in the declaration of the law and in its finding a verdict against the evidence and law.

EWING, SMITH & POPE,
For Plaintiff.

And afterwards, at a regular stated term of said circuit court, begun and held on the third Monday of November, A. D. 1879, at the place aforesaid, the following further proceedings were had in said case on the 18th day of November, 1879, to wit:

JONATHAN KIRKBRIDE
vs. 580.
LAFAYETTE COUNTY.

Special finding of facts filed.

This day comes the plaintiff, by H. Clay Ewing, esq., and the defendant by Alexander Graves, esq. Thereupon the motion for new trial heretofore filed is submitted, and by the court overruled; and the court returns a special finding of facts in this cause, which is filed and ordered to be made part of the record herein. Thereupon comes said plaintiff, and presents to the court a writ of error to reverse the judgment herein, and a citation directed to said defendant, citing it to appear at a supreme court of the United States on the second Monday of October next, and an appeal bond, which said writ of error is allowed, said citation signed, and bond approved, and ordered to be made part of the record herein.

And said special finding of facts so filed as aforesaid is in the words and figures following, to wit:

Special finding of facts.

Circuit court of the United States for the western district Mo.

42 JONATHAN KIRKBRIDE
vs.
LAFAYETTE COUNTY.

Be it remembered that the above case came on for hearing, on the decla-

ration, answer, and reply upon the facts as stipulated by the parties; a bond offered in evidence, the records of the county court, the articles of association of the St. Louis and St. Joseph Railroad Company, and of the St. Louis and St. Joseph Railroad Company, southern division, and the oral evidence offered.

I. The case being thus submitted, the court specially finds the facts to be as follows, to wit: I. The plaintiff's action is on coupons of bonds amounting to five thousand seven hundred dollars. These bond' were issued and delivered by the county court of the defendant to the St. Louis and St. Joseph Railroad Company in the month of November, 1868; said bonds are dated November 2nd, 1868, and were delivered about that date, and are of the following tenor, to wit:

No. 13.] STATE OF MISSOURI. [$1,000.

Lafayette County bond.—Ten years.

Issued in payment of stock of the St. Louis and St. Joseph Railroad Company.

Know all men by these presents that the County of Lafayette, in the State of Missouri, acknowledges indebted and firmly bound to the St. Louis and St. Joseph Railroad Company in the sum of one thousand dollars, which sum the said county promises to pay to the said St. Louis and St. Joseph Railroad Company, or bearer, at the banking-house of Alexander Mitchell & Co., in the city of Lexington, in the State of Missouri, on the first day of September, A. D. 1878, together with interest thereon from the first day of September, A. D. 1868, at the rate of ten per cent. per annum, which interest shall be payable annually on the
43 presentation and delivery at said banking-house the coupons of interest hereto attached, this bond being issued under and pursuant to an order of the county court of Lafayette County by authority of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken May 23d, 1868.

In testimony whereof the said County of Lafayette has executed this bond by the presiding justice of the county court of said county, under the order of said court, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court. This done at the city of Lexington, county of Lafayette aforesaid, this second day of November, 1868.

[SEAL.] JESSE SCHOFIELD,
Presiding Justice of the County Court of Lafayette County, Missouri.

Attest:
WM. HIXON,
Clerk of the County Court of Lafayette County, Missouri.

[Revenue stamp, 5 c.]

(Written across the face:) $1,000.

II. On the 5th of May, 1868, a petition of 25 tax-payers of Lexington Township, in said county, was filed in said county court, praying said court to order an election of the qualified voters of said township for the purpose of taking the sense of the qualified voters on subscribing by said township $75,000.00 to the capital stock of the St. Louis & St. Joseph Railroad Company, and that such election was ordered and held, and resulted by the proper vote in favor of such subscription.

III. That on 7th July, 1868, said county court, in pursuance of such election, did subscribe the sum of $75,000.00 for and on behalf of the township of Lexington to the capital stock of said St. Louis and St. Joseph Railroad Company.

IV. That said bonds purport on their face to have been issued by authority of an act entitled "An act to facilitate the construction of railroads in the State of Missouri," approved March 23d, 1868.

44 V. That plaintiff is a citizen of the State of Pennsylvania, and a purchaser for value before maturity of the bonds and coupons in question, without notice or knowledge of any irregularity in the subscription or issue of said bonds, except as may appear upon their face, and such as he was bound in law to take notice of, and is now the owner and bearer of the same, and that the defendant for three years paid the interest on these bonds as it fell due.

VI. The said St. Louis and St. Joseph Railroad Company was organized and incorporated on the 8th day of January, 1868, by filing articles of association on that date with the secretary of state, in pursuance of the general statutes of Missouri, title 24, of private corporations, chap. 63, of railroad companies, 1865, whereby they were authorized to construct and operate a railroad from Richmond, in Ray County, by the way of Plattsburg, to St. Joseph, in Buchanan County, the length of the road limited to 64 miles, with a capital stock of $2,000,000, each share $100, 13 directors.

VII. That the St. Louis and St. Joseph Railroad Company, southern division, was organized and incorporated on the 10th day of August, 1868, by articles of association filed with the sec't'y of state on that date in pursuance of the general statutes of Missouri last aforesaid, whereby it was authorized to construct and operate a railroad "from Richmond, in Ray County, to a point on the bank of the Missouri River, opposite to the city of Lexington;" that the length of this road is intended to be about nine miles, and that said St. Louis and St. Joseph Railroad Company, southern division, did construct its said road to within 500 yards of the north bank of the Missouri River, in Ray County, opposite to said city of Lexington. The company constructing said road had a capital stock of 200,000 dollars.

45 VIII. That the Missouri River is a navigable stream, and at that point is 1,500 yards in width, dividing said county of Ray from Lexington Township, in Lafayette County.

IX. That said railroad companies, or either of them, have never established a depot, either freight or passenger, within the corporate limits of said city of Lexington nor within said Lexington Township, but that passengers and freight are deposited on the north side of said river, in Ray County, at the depot.

X. That Lafayette County and Lexington Township and the city of Lexington are located on the south side of the Missouri River.

XI. That Richmond, in Ray County, is nine miles from said Lexington Township, in Lafayette County; that there is a ferry operated by a company of individuals in the city of Lexington, seperate and apart from the railroad, for the purpose of accommodating the public travel and freight going north and south, crossing the river at that point, and also an omnibus company, separate and apart from the railroad or ferry company, to transport passengers to & from the said railroad depot across said ferry, and for all other purposes of general travel; and that tickets for passengers on said railroad company are sold at an office in said city of Lexington.

(Signed) A. KREKEL, *Judge.*

We agree that the foregoing is the true statement of facts in this case.

EWING, POPE & HOUGH,
For Kirkbride.

ALEX. GRAVES,
Att'y for Def't.

And said stipulation of facts, referred to in the foregoing, is in the words and figures following, to wit:

Stipulation of facts.

In the circuit court of the United States for the western district of Missouri.

JONATHAN KIRKBRIDE, PLAINTIFF,
vs.
LAFAYETTE COUNTY, DEFENDANT.

46 It is hereby stipulated by Ewing and Smith, attorneys for the plaintiff, and Alex. Graves, attorney for defendant, as follows:

It is admitted that the plaintiff is a citizen and resident of the State of Pennsylvania, and that before the maturity of the bonds and coupons sued on he became the purchaser thereof for value, and is now the legal owner and holder thereof. That he so became the purchaser and owner of said bonds and coupons without other notice of the alleged invalidity or want of power in the defendant to subscribe stock and issue and delivered the said bonds than he would be bound by law to know and regard. That he demanded payment of the defendant, which was refused; and that the defendant had heretofore paid three years' interest on these bonds without objection.

It is further admitted that said railroad company did construct a part of the line of its said railroad to within 500 yards of the north bank of the Missouri River, in Ray County, immediately opposite to said township, and immediately opposite the city of Lexington, located in said township, and to a point between the extension of Broadway street and the lower limits of Anderson's addition to the city of Lexington, and which said city of Lexington is the county seat of Lafayette County, and not exceeding 2,000 yards from the said city and said township; and it is further admitted that the said Missouri River intervening is a navigable river of the United States of the width of 1,500 yards at that point. It

is further admitted that the said railroad company never did construct any depot whatever, either freight or passenger, within the corporate limits of said city of Lexington, nor within the limits of said township, and that said company does not and never has delivered its freight or passenger, in said city or township, but they are deposited on the north side of the river, in Ray County, at the aforesaid terminus. It is further ad-
47 mitted that the said city and township of Lexington is situated in Lafayette County, and on the south side of said Missouri River.

EWING & SMITH,
For Pl'tf.
ALEX. GRAVES,
Att'y for Def't.

And afterwards, at said last mentioned regular stated term of said circuit court, the following further proceedings were had in said case on the 20th day of December, 1879, to wit:

JONATHAN KIRKBRIDE
vs. } 580.
LAFAYETTE COUNTY.

Appeal bond filed.

This day comes the plaintiff, by A. M. Hough, esq., and on motion leave is granted plaintiff to withdraw from the files the appeal bond heretofore filed herein, and same ordered to be cancelled; and by further leave files an appeal bond, signed by Jonathan Kirkbride as principal and James S. Rollins as surety, which said bond is approved and ordered to be filed and made part of the record herein.

And said appeal bond so filed as aforesaid is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, Jonathan Kirkbride as principal and James S. Rollins, of Boone County, Missouri, as surety, are held and firmly bound unto Lafayette County, Missouri, in the full and just sum of two hundred dollars, to be paid to the said Lafayette County, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this day of , in the year of our Lord one thousand eight hundred and .

Whereas lately, at the November term, A. D. 1879, of the circuit court of the United States for the eastern division of the western dis-
48 trict of Missouri, in a suit depending in said court between Jonathan Kirkbride, plaintiff, and Lafayette County, defendant, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said Lafayette County, citing and admonishing it to be and appear at a Supreme Court *Court* of the United States, to be held at Washington, on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Kirkbride shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JONATHAN KIRKBRIDE. [SEAL.]
JAMES S. ROLLINS. [SEAL.]

Sealed and signed in presence of—
ISAAC D. HARBERT as to Kirkbride.
G. B. ROLLINS as to J. S. Rollins.

Approved by—

A. KREKEL, *Judge.*

The opinion of the court in the decision of this case is as follows:

Opinion of the court by A. Krekel, judge.

U. S. circuit court, western dist. Mo., Nov. term, 1876, Nov. 25th, 1876.

J. KIRKBRIDE
vs.
LAFAYETTE COUNTY.

By KREKEL, judge:

Plaintiff sues on coupons detached from Lafayette County bonds. It appears that in May, 1868, twenty-five tax-payers of Lexington Township, in said county, petitioned the county court to order an election
49 of the qualified voters of the township to determine whether a subscription of 75,000 dollars should be made to the capital stock of the St. Louis and St. Joseph Railroad, a corporation which before that time had been organized under the general laws of the State; that an election was held and 330 votes cast for the subscription and 16 against it; that the county court on return thereof "being satisfied that two-thirds of the qualified voters of said township who voted at said election did vote in favor of said subscription, and this court being further satisfied from the certificate of said clerk and otherwise that two-thirds of the qualified voters of said township have given their assent thereto," on the 7th day of July, 1868, subscribed stock to the amount set out in the tax-payers' petition and on the conditions therein specified, the court appointing Jessee Schofield, the presiding justice, to make the subscription, which he reports to have done on the 8th day of July following; that 37,500 dollars of said bonds were delivered to the railroad company on the 2d Nov., 1868; that on the 2d day of March, 1869, the court appointed one Letten agent of the county "to cast the vote of the county and represent her interest in the St. Louis and St. Joseph Railroad Company, and to receive the bonds of said county when issued, and hold the same until said company comply with the conditions of their contract;" that the balance of said bonds were issued on the 18th day of March, 1869, & delivered to agent Letten.

It further appears from the evidence that the St. Louis and St. Joseph Railroad Company was organized on Jan. 8th, 1868, for the purpose of building a railroad from Richmond, in Ray County, by way of Plattsburg,

to St. Joseph, in Buchanan County; that Richmond is nine miles from Lexington Township, and on the opposite side of the Missouri River; that another corporation, known as the St. Louis & St. Joseph Railroad
50 Company, southern division, was organized under the general laws of the State on the 10th day of August, 1868, to construct a railroad from Richmond to a point on the bank of the Missouri River opposite Lexington, which road was so constructed and is now in operation.

The bonds are issued by and in the name of the County of Lafayette, promising to pay the St. Louis and St. Joseph Railroad Company, or bearer, reciting that they are issued under and pursuant to an order of the county court of Lafayette County by authority of an act of the general assembly of the State of Missouri, approved March 23d, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken May 23d, 1868. Whatever may have been the power of the County of Lafayette to subscribe stock under the general railroad law and the constitution of Missouri in a railroad outside of and not touching the county is unnecessary to determine, for the bonds, from which the coupons sued on have been detached, upon their face show that they were issued under the act of 23d March, 1868, known in Missouri as the township railroad act. The question is, had the county for and on account of a township the power under the act last named to subscribe stock and issue bonds in payment? The section of the township act, under which the tax-payers applied for the vote to be taken, provides that whenever twenty-five persons, tax-payers and residents of any municipal township for election purposes in any county in this State, shall petition the county court of such county, setting forth their desire as a township to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through, or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the county court as soon as may be thereafter to order an election to be held
51 in such township to determine if such subscription shall be made, which election shall be conducted and returns made in accordance with the law controlling general and special elections; and if it shall appear from the returns of such election that no less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription it shall be the duty of the county court to make such subscription in behalf of such township.

It will be observed that under the provisions of this law the railroad to which a subscription is authorized to be made must be "building or proposing to build a railroad into, through, or near such township." The starting point of the railroad to which the subscription was made is from Richmond, on the opposite side of the Missouri River, nine miles away from the nearest point of Lexington Township or county.

The corporation organized to build that road, so far as the articles of association are concerned, never contemplated building "into, through, or near" Lexington Township. Lexington Township could therefore have no interest in subscribing to this road. It could derive no benefit from this road which it did not already possess through the North Missouri Railroad unless it be an indirect connection with St. Joseph, too remote an object to be taken into account. In this it differs from the case in 1st Wallace, 291, cited by plaintiff's counsel, the object as viewed by the court in

that case being to connect a distant point by way of a road already built. But it may be said that the object of the subscription was to connect the city of Lexington, and Lexington Township through it, with the St. Louis & St. Joseph and North Mo. Railroad at Richmond, and there is evidence tending to show that to have been the case. The petition asking submission, the vote taken, and the order subscribing were all prior to
52 July 8th, 1868, at which time the southern division, intending to make the connection, had no existence, it having been incorporated Aug. 10th, 1868, so that the subscription was to the original road and not the southern division thereof. The bonds themselves on their face show that they were issued to the St. Louis and St. Joseph Railroad, and not to the southern division thereof. The township railroad law requires the road to run "into, through, or near such township," and unless it does so run there seems to be no authority in the township to subscribe.

Richmond, the terminus of St. Louis and St. Joseph Railroad, is nine miles away from the nearest point to Lexington Township or Lafayette County, with a navigable river between them; cannot be said to be near said township or county, and therefore legal authority was wanting to make the subscription and issue the bonds. The Supreme Court of the U. S. in a late case, Harshman vs. Bates County, has called attention to the distinction between the constitutional provision requiring "two-thirds of the qualified voters of such county, city, or town," and the provision of the township act cited, which requires "two-thirds of the qualified voters of such township voting at such election," and intimated that for this conflict the act might be declared unconstitutional. In the case under consideration the county courts not only ascertained that two-thirds voting at the election voted for the subscription, but also that the number voting favorable constituted two-thirds of the qualified voters of the township. The judge, delivering the opinion of the court in the case cited, also intimates that a township, a mere political subdivision of a county, could not be constituted a corporate body by the legislature under the constitution of Missouri, which enumerates counties, cities, or towns, so as to avoid the requirements of the constitution regarding subscription. If this be the opinion of the Supreme Court it would seem that all subscriptions made by
53 counties for and on behalf of townships would be void. The remaining question in the case under consideration to determine is, whether an innocent holder for value is bound to ascertain, at his peril, whether the bond he purchases, if issued under the township act, was issued to a road which ran "into, through, or near such township." It would seem to be his duty, as upon this the authority to subscribe and issue bonds in payment depends. (Dillon on Corporations, sect. 425, 11th Ohio, 183.) This is a legal provision and differs from conditions upon which subscriptions are made. In the latter class of cases the issuing of the bonds has been uniformily held to imply that the conditions agreed upon between the parties before their issue have been fulfilled or waived. For want of legal authority to issue the bonds the coupons do not constitute a legal indebtedness. Judgment will therefore be rendered for defendant.

Ewing & Smith for pl'ff.
Graves, Lay & Belch for def't.

Opinion of the court by Jno. F. Dillon, judge.

DILLON, circuit judge:

Without expressing any opinion whether there was a want of power to issue the bonds, on the ground that the railroad company to which the subscription was made and the bonds issued was not one whose line of road was "near" to the township; or, if it be not "near" the township, whether under the recital in the bond this fact could avail to defeat a recovery by a bona fide holder for value. I concur in the result, on the ground that the case is controlled by Harshman vs. Bates County, decided by the U. S. Supreme Court at the October term, 1875. The judgment of the court in that case held the act of March 23d, 1868, recited in the bonds as the authority for their issue, unconstitutional, and this is the only act authorizing township bonds, like these here in suit, ever passed by the general assembly of Missouri. The circumstance in this case that two-thirds of all the voters of the township did, in fact, vote for the subscription is without legal significance, and cannot have the effect to validate the act of March 23d, 1868, in respect to the matter in which
54 the Supreme Court holds it to conflict with the constitutional requirements. Judgment for the defendant.

Ewing & Smith for the plaintiff.
Rathbun & Graves for the defendant.

And afterward, sat said last mentioned regular stated term of said court, the following further proceedings were had on the 1st day of March, A. D. 1880, it being an adjourned day of said term, to wit:

Amendment to special findings.

JONATHAN KIRKBRIDE
vs. } 580
LAFAYETTE COUNTY.

This day comes the plaintiff, by H. Clay Ewing, esq., his attorney, and submits to the court an amendment to the special finding of facts herein; and it appearing that the defendant's counsel has agreed to such amendment, as appears by his endorsement on said amendment this day filed, it is now ordered that paragraph I of said finding be stricken out and the following inserted in lieu thereof, to wit:

I. The plaintiff's action is on coupons of bonds amounting to five thousand seven hundred dollars. These bonds were issued and delivered by the county court of the defendant to the St. Louis and St. Joseph Railroad Company in the month of November, 1868, and March, 1869. Some of said bonds are dated November, 2, 1868, and some of them are dated March 15, 1869. Those dated in 1868 are signed by Jesse Schofield, as presiding justice of the county court, and those dated in 1869 were signed by Ninian W. Letton, as presiding justice, and are all of the following tenor, except as to date and signature of the presiding justice:

Amendment to petition.

On further motion of said attorney for plaintiff leave is granted to

amend his petition herein by striking out the name of "Ninian W. Letton," wherever the same occurs in the third count of said petition, and inserting in lieu thereof the name of "Jesse Schofield," which amendment is accordingly made. The agreement of defendant's counsel to the amendment is in the words and figures following, to wit:

Agreement to amendment.

In U. S. circuit court.

KIRKBRIDE)
vs.
LAFAYETTE CO.)

LEXINGTON, MO., *Jan'y 26th*, 1880.

General Ewing has my consent to insert the above statement of facts in the finding in said cause, for purposes of correction.

ALEX. GRAVES,
Att'y for Def't.

55 UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, set:

I, Henry C. Geisberg, clerk of the circuit court of the United States in and for said district, do hereby certify that the foregoing writing is a true transcript of the record and proceedings in case No. 580, wherein Jonathan Kirkbride is plaintiff and Lafayette County is defendant, as fully as the same remains of record and on file in my office.

Witness my hand as clerk and the seal of said court. Done at office, in the city of Jefferson, this fifth day of March, 1880.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) Case No. 580. U. S. circuit court, western district of Missouri, eastern division. Jonathan Kirkbride vs. Lafayette County. Duly certified copy of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 197. Jonathan Kirkbride, plaintiff in error, vs. Lafayette County. W. Missouri C. C. U. S. Filed 11th March, 1880.

(Stamped:) Office Supreme Court U. S. Filed Mar. 11, 1880. D. W. Middleton, clerk.

108-208

—IN THE—

SUPREME COURT OF THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF MISSOURI.

JONATHAN KIRKBRIDE,
Plaintiff in Error,
vs.
LAFAYETTE COUNTY,
Defendant in Error.

No. 197.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

J. B. HENDERSON,
Attorney for Plaintiff.

Pierce Bros., Printers 118 North Third Street.

—IN THE—

SUPREME COURT OF THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF MISSOURI.

JONATHAN KIRKBRIDE,
Plaintiff in Error,
vs.
LAFAYETTE COUNTY,
Defendant in Error.
} No. 197.

STATEMENT OF CASE.

The stipulations of counsel, and the finding of fact by the court, show the facts of the case to be as follows:

The action is on coupons detached from bonds issued by Lafayette County for Lexington township, under what is known as the township aid railroad act of Missouri, approved March 23, 1868.

On May 5, 1868, the necessary petition for tax-payers of Lexington township was filed in the County Court, praying an order for an election of the qualified voters of said township, for the purpose of determining whether the township would subscribe $75,000 to the capital stock of the St. Louis and St. Joseph Railroad Company. The election was ordered and held, at which 330 votes were cast for the subscription, and

16 against it. The vote was canvassed by the County Court, and an order entered declaring that two-thirds of the qualified voters of the township had given their assent to the subscription, and thereupon, on the 8th day of July, 1868, the County Court subscribed the amount of stock mentioned to the aforesaid company, and on the 2d day of November, 1868, the bonds in controversy were issued and delivered to the company.

The bonds purport, on their face, to have been issued by authority of an act entitled "an act to facilitate the construction of railroads in the State of Missouri," approved March 23, 1868, and the plaintiff, who is a citizen and resident of the State of Pennsylvania, became the purchaser of the bonds before maturity thereof, for value, and without notice of any infirmity therein.

The company to which the bonds were issued was incorporated and organized on January 8, 1868, by the filing of articles of association with the Secretary of State, as provided by law. The company was authorized to construct and operate a railroad from Richmond, in Ray County, via Plattsburg, to St. Joseph, in Buchanan County, a distance of 64 miles, with a capital of two million dollars.

On August 10, 1868, the St. Louis and St. Joseph Railroad Company (Southern division) was incorporated and organized in like manner, with power and authority to construct and operate a railroad "from Richmond, in Ray County, to a point on the bank of the Missouri River opposite to the city of Lexington," a distance of about nine miles. It is admitted that the St. Louis and St. Joseph Railroad Company did construct its line of railroad to within five hundred yards of the north bank of the Missouri River, and

to a point not exceeding two thousand yards from the city of Lexington, which is within Lexington township. The railroad, as thus completed, has continued to be operated from the time of its construction to the present. There is a ferry across the Missouri River at the terminus of the railway, which carries passengers and freight between the railway and the city of Lexington, and a regular omnibus line running between said city and a depot of the company. There is, and has been an office for the sale of tickets in the city of Lexington over the line of said road. The ferry and omnibus line are independent of the railroad company.

The first section of the act of 1868, under which these bonds were issued, read as follows: "Whenever twenty-five persons, taxpayers and residents in any municipal township, for election purposes, in any county in this State, shall petition the County Court of such county, setting forth their desire, as a township, to subscribe for the capital stock of any railroad company within this State, building or proposing to build a railroad into, through or near such township, and stating the amount of such subscription and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the County Court, as soon as may be thereafter, to order an election to be held in such township, to determine if such subscription shall be made; * * * * and if it shall appear from the return of such election that not less than two-thirds of the qualified voters of such township, voting at such election, are in favor of such subscription, it shall be the duty of the County Court to make such subscription in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of

bonds in payment of such subscription, the County Court shall issue such bonds in the name of the county, with coupons for interest attached."

The case was tried before Judges Dillon, of the Circuit Court, and Krekel, of the District Court, at the November term of the Circuit Court, 1876. Two opinions were delivered in the case. Judge Krekel held that the bonds were void, on the authority of Harshman v. Bates Co., which had just then been decided by this court. He also held the bonds invalid on the ground that the company was not authorized to build a railroad into, through or near Lexington township. The following language appears in his opinion: "The starting point of the railroad to which the subscription was made is from Richmond, on the opposite side of the Missouri river, nine miles away from the nearest point of Lexington township. * * * Lexington township could therefore have no interest in subscribing to this road. It could derive no benefit from this road which it did not already possess through the North Missouri railroad, unless it be an indirect connection with St. Joseph, too remote an object to be taken into account."

Dillon, Circuit Judge, said: "Without expressing any opinion whether there was a want of power to issue the bonds, on the ground that the railroad company to which the subscription was made and the bonds issued was not one whose line of road was 'near' to the township; or, if it be not 'near' the township, whether, under the recital in the bond, this fact could avail to defeat a recovery by a *bona fide* holder for value, I concur in the result, on the ground that the case is controlled by the case of Harshman v. Bates County, decided by the Supreme Court of the United States, at the

October term, 1875. The judgment of the court in that case held the act of March 23, 1868, recited in the bonds as authority for their issue, unconstitutional, and this is the only act authorizing township bonds,'' *etc.*

ARGUMENT AND BRIEF.

Since the rendition of the judgment in this case, the ruling of this court in the Harshman case has been reviewed, and the judgment of the lower court rests entirely on the construction given by the District judge to the act of 1868.

The plaintiff in error insists that the judgment of the lower court is erroneous for the reasons, *first*, that the line of the railroad is sufficiently near to the township to comply with the provisions of said act; *second*, that whether the road be far from or near to the township, is a question exclusively for the consideration of the people of the township and the county authorities, and their decision is final in the premises; and *third*, the recital in the bonds that they were issued under the act of March 23, 1868, operates as an estoppel against the township, and makes them valid in the hands of an innocent holder for value.

I.

By examining a map of Missouri, it will be seen that two lines of railway diverge from Lexington on the south side of the river, one to St. Louis and the other to Kansas City. These lines of road put Lexington into close communication with the entire south-western system of railways. The

road to which these bonds were issued was evidently intended to connect St. Joseph, Northwestern Missouri, Southern Iowa and Nebraska with the Southwestern system, extending to Arkansas and Texas. This line by way of Lexington was direct, and the contemplated road was one whose value and importance were not overestimated by the people of Lexington Township. The construction of a bridge over the Missouri river, for which ample power existed, and still exists, under the laws of the United States, placed the city of Lexington on this great line of transportation, and made the citizens of that township the recipients of its advantages

Under the act of 1868, it was not essential to the power of subscription or the validity of the bonds that the company should be authorized to build its road "through" the township. It was not even necessary that the company build "into" the township. It was sufficient if it was "building," or even "*proposing*" to build "near" such township. It was not necessary that the company should be building or proposing to build its own line of road into, through or near such township. It was enough if it was building or proposing to build "a railroad" into, through or near such township.

It is true that the road actually subscribed to began at a point nine miles from the township, but, before the bonds were issued, a company, having the same name and supplementary by its very terms to the original company, was organized, with authority to build and operate the road to the township line. And the stipulation of counsel admits that the original company not only "proposed" to build, but did build substantially to the river—at least to a point where the northern pier of a bridge would likely be placed.

Substantially the same question involved in this case arose in Van Hostrup v. Madison City, 1 Wall., 296. In that case the stock was subscribed to a road between forty and fifty miles from Madison City. In deciding the case this court held the following language:

The words are "to take stock in any chartered company for making a road or roads to the said city." It is supposed that the authority to subscribe is tied down to a chartered road, the line of which comes within the limits of the city, and that the words are to be taken in the most literal and restrictive sense. But this, we think, would be not only a very narrow and strained construction of the terms of the clause, but would defeat the manifest object and purpose of it. The power was sought and granted, with the obvious idea of enabling the city to promote its commercial and business interests by affording a ready and convenient access to it from different parts of the interior of the State, and thus to compete with other cities on the Ohio River and in the interior which were or might be in the enjoyment of railroad facilities. This object and purpose, we think, should be kept constantly in view in giving a construction to the clause in the charter. For, while it will operate to prevent a narrow and fruitless interpretation, it will have the effect of guarding against any abuse or unreasonable extension of power."

Again, the court said, "the object of the subscription in the first was to extend the facilities of railroad communication through the interior between the two towns, the *termini* of the road. In the second, as a road had already been made to Columbus, and in operation, the inter-communication is accomplished by a subscription to a line from

road to which these bonds were issued was evidently intended to connect St. Joseph, Northwestern Missouri, Southern Iowa and Nebraska with the Southwestern system, extending to Arkansas and Texas. This line by way of Lexington was direct, and the contemplated road was one whose value and importance were not overestimated by the people of Lexington Township. The construction of a bridge over the Missouri river, for which ample power existed, and still exists, under the laws of the United States, placed the city of Lexington on this great line of transportation, and made the citizens of that township the recipients of its advantages

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Again, the court said, "the object of the subscription in the first was to extend the facilities of railroad communication through the interior between the two towns, the *termini* of the road. In the second, as a road had already been made to Columbus, and in operation, the inter-communication is accomplished by a subscription to a line from

Columbus to Shelby. The difference in the two cases is simply a dispute upon words."

The court, in construing the phraseology under which the subscription was made, said:

"The terms of the clause do not limit the subscription to one road or to one company: 'road or roads in any chartered company.' The argument, therefore, against the power rests exclusively upon the effect to be given to the concluding words, "to said city.'"

The counsel for Madison City made the same argument that is urged in this case, growing out of the abuses that might be committed by municipal authorities, to which the opinion replies as follows:

"It was strongly argued that, upon this construction, great abuses may be committed by the city corporation in subscriptions of stock to remote companies, in which it would have but little, if any, interest or advantage. In the construction of the grant of powers, extreme cases may be suggested which it is difficult to answer. But in the present and kindred cases, something may be trusted to the wisdom and integrity, as well as the interest, of the body appointed to execute the power."

II.

I have already shown that it was not necessary to the validity of the bonds that the railroad company receiving them should possess the corporate power to build its own road "into, through or near" the municipality issuing them. It is only necessary that such company should propose to build some line of road near to the township. If it be in contemplation at the time the bonds are issued to con-

solidate with another line of road, by which the desired object may be attained, or if it be proposed to lease the line of some other company, so as to bring the contemplated road within the terms of the law, there can be no doubt of the validity of the bonds so issued. The facts in this case all show, when the subscription was voted by the people, the supplementary road was in contemplation. When the bonds were issued it had been organized, and the company to which the bonds were issued built the entire line and continues to operate it down to the river—a point as near as possible to the township line without constructing a railroad bridge.

But, aside from this point, which has already been presented, it is insisted that this is a question to be settled by the people in their vote, and by the County Court in issuing their bonds, and that their decision is final.

In Meyer v. Muscatine, 1 Wall., 384, this court held: "If the subject admitted of doubt, we should hold that the city, having acted on its own construction and drawn in others to take the securities and advanced their money upon it (the construction), is now concluded from denying that construction to be the true one."

And again, in the same case: "The city and citizens adopted and acted upon the ordinance as valid and sufficient. The citizens voted and the city authorities issued the bonds. No one interposed to prevent their issue. It is not questioned that all the parties acted in good faith, and the city cannot now be heard to object to the regularity of its own proceedings. A party taking the bonds was bound to look to the legal authority under which the public agents acted. If that were sufficiently comprehensive, he had a right to

presume that those empowered to act, and acting under it, had complied with its requirements."

In Knox Co. v. Aspinwall, 21 How. 539, it is said:

"The bonds on their face import a compliance with the law under which they were issued, and the purchaser was not bound to look further for evidence of a compliance with the condition of the grant of the power."

In Mercer County v. Hackett, 1 Wall. 83, it is decided that it is no defense that the act of the Legislature under which bonds are issued, authorized their issue only on, and subject to certain "limitations, restrictions and conditions" which have have not been complied with; nor that the bonds were sold at less than par, when the act declared that in "no case," nor "under any pretence" should they be so sold. That county bonds are negotiable paper, and when they declare on their face to be issued under a certain act, and pass into the hands of innocent purchasers, the county is bound to pay them.

In Wood v. Lawrence County, 1 Black, 386, it is decided that where a statute requires that the grand jury should fix the amount of subscription before the commissioners were authorized to subscribe, it is not incumbent on the holder to show that the grand jury fixed the amount; nor is it any defence to the county to show that they omitted to do so.

In the case of Van Hostrup v. Madison City, 1 Wall., 291, already cited, the objection was that the railroad company was not authorized to build its railroad to the city of Madison. This court held, "the bonds signed by the Mayor and clerk of the city recite upon the face of them that they were issued by virtue of an ordinance of the common council of the city. This concludes the city as to any ir-

regularities that may have existed in carrying into execution the power granted to subscribe the stock and issue the bonds as has been repeatedly held by this court."

Again:

"Even if the case had been doubtful, inasmuch as the city authorities have given this construction to the charter (of the company) and bonds have been issued and in the hands of *bona fide* purchasers for value, we should have felt bound to acquiesce in it."

In Coloma v. Eades, 92 U. S., 490, it is said, "they (the commissioners) have declared the contingency to have happened, on the occurrence of which the authority to issue the bonds was complete. Their recitals are such a decision; and beyond those a *bona fide* purchaser is not bound to look for evidence of the existence of things *in pais*. He is bound to know the law conferring upon the municipality power to give the bonds on the happening of a contingency, but whether that has happened or not, is a question of fact, the decision of which is, by the law, confided to others—to those most competent to decide it—and which the purchaser is, in general, in no condition to decide for himself."

In Marcy v. Township of Oswego, 92 U. S., 637, it was urged that the bonds were issued in excess of 10 per cent. of the taxable wealth of the township, and were therefore void. The court said:

"The existence of sufficient taxable property to warrant the amount of the subscription and issues was no more essential to the exercise of the authority conferred upon the Board of County Commissioners than was the petition for the election, or the fact that fifty freeholders had signed, or that three-fifths of the legal voters had voted for the subscription.

These are all extrinsic facts, bearing not so much upon the authority vested in the board to issue the bonds, as upon the question whether that authority should be exercised. They are all, by the statute, referred to the inquiry and decision of the board, and they were all determined before the bonds and coupons came into the hands of the plaintiff. He was therefore not bound, when he purchased, to look beyond the act of the legislature and the recitals which the bonds contained "

In Humboldt v. Long, 92 U. S., 642, the bond only recited that it was issued under a certain act of the legislature. That act required a vote as a condition precedent, and also other limitations were imposed, among them the same as Marcy v. Oswego, that the issue should not exceed 10 per cent. of the assessable property.

The recital of the act by title was held to be a recital of everything required in the act; and the court held as follows: "Whatever may be the right of the township as against those who issued the bonds, it cannot set up against a *bona fide* holder of the bonds that the amount issued was too large, in the face of the decision of the board, and their recital that the bonds were issued pursuant to, and in accordance with the act of 1870."

In Moultrie v. Savings Bank, 92 U. S., 631, the bonds were ante-dated so as to prevent the bar of the constitutional provision, which prohibited further issues. The court says: "After having assured a purchaser that the subscription was made in December, 1869, when they had power to make it, it would be tolerating a fraud to permit the county to set up when called on for payment, that it was not made until after July 2, 1870, when their authority expired."

In Comrs. v. Bolles, 94 U. S., 109, the court holds: "Behind such a recital as we have seen, a *bona fide* holder for value is bound to look for nothing except legislative authority given for the issue of municipal bonds to railroad companies. He is not required to examine whether the conditions upon which such authority may be exercised have been fulfilled. He may rely upon the decision made by the tribunal selected by the legislature."

In Comrs. v. January, 94 U. S., 205, the court says: "They (the County Courts) were thus constituted a tribunal for the adjustment of all questions touching the subject. They were clothed with the power, and charged with the duty to decide them. No appeal or review was provided for. Their issuing the bonds was the reflex and embodiment of their judgment that it was proper to do so. It implies a prior determination to that effect. The fact carries with it the presumption. The bonds recite that they were issued in conformity to law, and in pursuance of the election. It is true that they refer to the wrong statute, but *falsa demonstratio non nocet*. The bad here does not hurt the good. The act of the commissioners was the act of the county, and the county is conclusively bound by what they have done. As between the county and a *bona fide* holder, no question involving the infirmity of the securities can be raised."

In the case of Compton v. Cooper Union, 101 U. S., 200, a case in many respects similar to the present, the court used the following language:

"The Commissioners being constituted the sole judges as to the points mentioned with reference to parting with the bonds, their decision was conclusive. There could be no appeal and no review. It was a matter with which a *bona fide* purchaser had nothing to do. The phrases 'along the

route,' or 'at the *termini*' have a meaning as plain and clear as that of any other terms the law-makers could have employed."

In the case of County of Typton v. Locomotive Works, 103 U. S., 539, this court said: "Whether the conditions precedent had been complied with, was a question which was in effect left by law to the corporate authorities, who issued the bonds, to decide; the plaintiff, therefore, being a *bona fide* holder, was not bound to look beyond the legislative act and the recital in the bonds."

To the same effect see Walnut v. Wade, 103 U. S., 695.

In the case of Manasha v. Hazard, 102 U. S., 95, this court held: "Having on them (the bonds) the necessary certificate, the purchaser need not inquire whether the facts were as certified. With the certificate endorsed, the bonds were, in legal effect, the same as if they had been issued by the proper officers, under full authority, without the condition which appeared on their face. Under these circumstances, the condition did not destroy their negotiability."

Defendant's counsel erroneously supposes that the case of Sherrard v. Lafayette County, 3 Dillon, 236, is an authority against the validity of the coupons sued on. In the Sherrard case there was a total want of power to issue any bond whatever by the county. The bonds in that case were issued to the Louisiana & Missouri River Railroad Company. That company was authorized to build a railroad from Louisiana, Missouri, on the Mississippi River, to some point on the Missouri River. Lafayette County being on the south side of the Missouri River, it was impossible that the line of road should pass through it.

The only authority given to subscribe for stock in said com-

pany was in the following words: "It shall be lawful for the County Court of any county, in which any part of the route of said railroad may be, to subscribe to the stock of said company." In that case it was properly held by Judge Dillon that there was a total want of power to subscribe, and that the purchaser was bound to know the terms of the act of the Legislature. In the case under consideration, it is only necessary that the company should be building or proposing to build, not the road authorized by its charter, a railroad, near the township. Even if Richmond had been the nearest point to the township which could have been reached by the company, a purchaser of bonds had the right to suppose, after the vote of the people and the orders of the County Court, that the road was sufficiently near to be beneficial to the people of the township.

Whether it was so or not is a question exclusively for the consideration of the people, and unless their decision is final, great confusion and uncertainty would necessarily result. One court might hold that the road was near, while another, equally honest, might hold the contrary. And the same court, under a different state of evidence, might be led to change its former opinion. The question here presented is not one of power. Whether the road was far or near to the township was a question depending entirely upon the judgment of those immediately interested, and when once decided by them it must be conclusive as to all other parties. It is like any other condition on which the issue of bonds is made to depend. If an antecedent election be necessary, or if it be necessary that the road itself be fully completed before issue of the bonds, or if the issue be limited to a certain percentage of the property within the municipality, or if any other condition be prescribed which is at all possible

under the terms of the law, then, the issue of bonds declaring that they are issued pursuant to the act, makes the bonds good, whether the conditions have been complied with or not. It may be said, in this case, that it was impossible for the company, as organized, to build the chartered line "into" or "through" the township of Lexington. But it can not be reasonably said or contended that it could not build its chartered line "near" to the township. In the estimate of one man, nine miles may not be near for a railroad, but in the estimate of hundreds of others it may be near enough for all commercial purposes desired. One farmer may think a railroad near enough to his farm if it comes within two miles, another may be satisfied if it comes within nine miles, whilst some might not consider it near unless it bounded their farms or actually passed through them. But this is not a question of law, but a question of fact. That question of fact was fully decided in the issue of the bonds, and cannot now be reviewed in this court. As was said in Marcy v. Oswego, already cited, it is an extrinsic fact, "bearing not so much upon the authority vested in the board to issue the bonds as upon the question whether that authority should be exercised."

The counsel for defendant is mistaken in supposing that the recital in these bonds is not such as to preclude the defense here made. The bond recites that it was issued under the act of March 23, 1868, and authorized by a vote of the people. It has been invariably held by this court, beginning with the case of Knox County v. Aspinwall, 21 How , 539, that the simple recital that bonds are issued in "pursuance of" or "under" a specified statute, imported a compliance with all the requirements of the law referred to. In other

words, when bonds purport to be issued under a particular statute, a *bona fide* purchaser is authorized to assume that all the conditions and requirements of the law have been complied with.

Marcy v. Oswego, 92 U. S., 637.
Humboldt Township v. Long, 92 U. S., 642.
21 How., 539.

III.

For the reasons already stated, the defendant is estopped from making the defense set up in this case. As was said in Humboldt v. Long, the bonds are not invalid in the hands of a *bona fide* holder, by reason of their having been voted and issued in violation of some condition prescribed in the act. So far as the plaintiff is concerned, the act has been fully complied with in every respect.

In the case referred to, the court held as follows: "Whatever may be the right of the township as against those who issued the bonds, it can not be set up against a *bona fide* holder of the bonds that the amount issued was too large, in the face of the decision of the board, and their recital that the bonds were issued pursuant to, and in accordance with the act of 1870."

In the case of Marcy v. Township of Oswego, already cited, it was held that the municipality issuing bonds is absolutely estopped from disputing any question of fact which was necessary to their issue.

In the case of Venice v. Murdock, 92 U. S., 494, it was properly said that when the municipality issued a bond all the antecedent facts necessary to the issue were conclusively settled in favor of the bond, and that such facts

could not subsequently be inquired into. It was said that if the holder of bonds, issued under such circumstances, were required to make new proof of the facts essential to their issue in every suit brought for their collection, no sane person would become a purchaser. Unless these questions are settled at the time of issuing the bonds, they are open for dispute in every action brought for their collection. It is, therefore, certain that the defendant is absolutely precluded from contesting the validity of these bonds.

IV.

It is insisted by the defendant that the bond sued on is in form a county bond—that the words "Lexington Township" do not appear in the bond, and hence no recovery can be had against the township. By examining the bond on page 40 of the record it will be observed that it is declared to be issued by authority of the act of March 23d, 1868. This act authorized no bonds except county bonds for township purposes. The facts agreed upon by counsel, and the finding of the court, conclusively show that the bond in question was issued by the county in the proper form, but to be payable by the people of Lexington Township. The only question for inquiry in this case is whether the county had the power to issue the bonds. A failure to recite all the jurisdictional facts, or even a false recital of them, does not invalidate the bond. This very question arose and was decided by the Supreme Court of Missouri in Smith v. Clark County, 54 Mo. 58. In that case it was objected that the bond purported to be issued under one act, whereas in truth it was issued under a different act, and the court said "if he (the holder) can show that the power existed, a false re-

cital of it, however obligatory on the county or its agents, would not defeat its efficacy in the hands of a party nowise concerned in the perpetration of the falsehood." This principle has been re-affirmed by the Missouri court within the last year. In the case of Franklin Av. German Savings Institution v. The Board of Education, 75 Mo., 408, it is said, "no principle is more firmly established than that the acts of officers and agents, as respects commercial paper and the like, do not derive their validity from professing on their face to have been done in the exercise of delegated authority: the liability of the principal in such cases depending on the act done, and not on the form in which such act finds expression."

J. B. HENDERSON,

Attorney for Plaintiff.

OFFICE SUPREME COURT U. S.
FILED
JAN 8 1883

No. 197.

——IN THE——

SUPREME COURT OF UNITED STATES,

OCTOBER TERM, A. D., 1882.

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JONATHAN KIRKBRIDE,
Plaintiff in Error,
vs.
LAFAYETTE COUNTY.

In Error to the Circuit Court of the United States for the Western District of Missouri.

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Brief and Argument in Behalf of Defendant in Error,

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BRIEF.

I.

a.

The word "near," as used in "Township Aid" act, is to be determined by the context words "INTO AND THROUGH." Potter's Dwarris on Statutes and Constitutions p., 196: "Words and phrases (in statutes) shall be taken in their plain, ordinary and usual sense, unless repugnant to context. Construction of Statutes, Mo. Code, 1865, chapt. 9, sec. 6, p. 83.

b

The circuit court FOUND ON THE TRIAL that the road to which these bonds were issued, starting NINE miles away from Lexington township, and running in the opposite direction, from Richmond, in Ray county, to St. Joseph, in Buchanan county, with the Missouri river intervening, was not NEAR in the sense of the "Aid Act." This FINDING is conclusive here like the VERDICT of a jury. Printed Record, pp. 45-46.

II.

a.

Is BONA FIDE holder affected with knowledge of the geographical subdivisions of the country, its rivers, distances and railroads?

The courts take OFFICIAL notice thereof and surely the holder MUST know such facts.

Greenleaf on Evidence, vol. 1, (12th Ed.) § 6

Brown vs Piper, 91, U. S., 42.

RAILROADS ARE PUBLIC HIGHWAYS. Olcott vs. Supervisors, 16 Wal., 678. Gelpecke vs. Dubuque, 1 Wal., 678, and the power to subscribe thereto "CONCERNS THE MUNICIPALITY IN ITS PUBLIC POLITICAL CAPACITY."

Aspinwall vs. Commissioners, 22 How., 377.

A general statute of Missouri in force at time of subscription defined all the counties in the state and their boundaries with reference to the Missouri river.

Genl. Stat. of Mo., (1865) chapt. 34, pp. 185, 193, 203, secs. 1, 38 and 78.

b.

The judgment herein is fully sustained by Sherrard vs. Lafayette County, decided by Dillon, 2 Central Law Journal, pp. 347 and 348, and is not at variance with VanHostrup vs. Madison, 1 Wal. 295 and 296, but is supported thereby, wherein, upon page 296 SUPRA, this court says: "We think it quite clear a subscription to a road wholly unconnected with roads leading to the city would not be within its (the charter's) fair intent and meaning."

III.

These bonds contains no RECITAL that they were issued on BEHALF of or AUTHORIZED by any TOWNSHIP whatever. There is, therefore, no ESTOPPEL against denying that Lexington township, SOUTH of the Missouri river, is near Richmond, Ray county, nine miles NORTH of that river. This fact distinguishes from Coloma vs. Eaves, 92 U. S., 484, and all that class of cases, but rather brings it within Buchanan vs. Litchfield, 102 U. S., 278.

IV.

These bonds are regular county bonds, and recite that they are authorized by a vote of the people; they do not refer to any township. The holder is bound by the recital. The "Aid Act" did not authorize the bond.

Ogden vs. Daviess County, 102 U. S., 634.

Argument

I

Upon the facts in this case a single question of law arises, viz: Does the subscription upon which these bonds were issued come within the purview of the "Township Aid Act." *It is the only law* under which any township bond can be issued. This act [Session Acts, 1868, p. 92, sec. 1,] only authorizes a subscription to the stock of a railroad company "building or proposing to build a railroad *into, through or near*" the township on whose behalf the subscription is made. If, therefore, the road to which this subscription is made, was not such a road as contemplated in said "Township Aid Act," then there was a total lack of power in the county court to subscribe to its stock. There is no pretense that this road runs *into, through or near* Lexington township. Page 44 of original record, being page 41, printed record, shows the fact to be that the company to which this subscription was made, was incorporated on the 8th of January, 1868, with authority to construct and operate a railroad from Richmond, in Ray county, north of the Missouri river, running north to St. Joe, in Buchanan county; that the city of Lexington and Lexington township are situated in Lafayette county, south of the Missouri river, which is a navigable river of the United States, 1,500 yards in width, and that there is an *intervallum* of 9 miles between Lexington township and Richmond; that at the time of said subscription there was no railroad company in existence, *building or proposing to build* a railroad through said *intervallum* south from Richmond, across said river to Lexington or Lexington township. [See printed record herein, p. 41.]

Now, evidently, the "Township Aid Act" has but one policy, namely, that the subscribing township should receive some commercial advantage from the subscription, and for that reason the act limits subscriptions to companies only that are building or proposing to build a railroad *into, through or near*" the township.

The word *near*, as indicating distance, must be construed with reference to the other words in the context, having reference to the same subject.

"*The peculiar sense in which a word is used in any section is to be determined by the context.*" Potter's Dwarris on Statutes and Constitutions, page 196, title Construction of Words.

Numerous other authorities might be cited, but the above will be sufficient to sustain a point so clear.

The words "*into or through*," as used in this statute, show that the object of the law is to confine such subscriptions to roads which will be of some *peculiar* benefit to the subscribing township, and these words indicate very clearly that the whole purpose of the statute is to authorize a subscription only to a road whose proximity is such that the township shall reap a remuneration for its bonds in the way of increased mercantile facilities; but since these advantages may be obtained by a road which has no actual contact with the township by passing "*into or through*" it, the legislature has also used the word "near such township."

The very fact that this word "near" occurs in such close context with the words, "*into or through*" in describing to what road the bonds were authorized to be issued, should, under all canons of construction, control the meaning of the term "near," and that construction should limit the term "near" to its strictest and most confined sense.

It will be observed that in this section of the "aid act" the power to subscribe is not extended to roads that may run "*into, through or near*" the county into which the subscribing township is located; for in that event the legislature evidently foresaw that schemers could abuse the law by procuring subscriptions from a township situate upon one side of the county to a railroad running "*into, through or near*" the other extreme portion of the county. Instead of this the statute plainly limits the power of subscription to a road running "*into, through or near*" the township.

The Statute of Missouri has provided a method of construing the words of acts of the legislature, which statute of construction was in force long before the "aid act," and which simply embraces

the common construction adhered to by all courts of the civilized world. See section 3,126, page 522, of vol. No. 1, Missouri Statutes, revision 1879, under title, "Construction of Statutes." It reads as follows: "The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute. First, "*Words and phrases shall be taken in their plain, or ordinary, and usual sense.*" The plain and usual meaning of this word as laid down by Webster, as an adverb, is "almost," "within a little," and expresses a closer proximity than the word "nigh." The policy of this "aid act," therefore, having for its sole object the promotion of the commercial advantage of the *subscribing* township, and limiting the power to subscribe to roads that run into, through or near such township, rather than into, through or near the county, and all rules demanding that this word "near," in this connection, shall be taken in its restricted sense, can there be a doubt entertained that the county court violated the "aid act" in making this subscription to a road that had its initial point 9 miles away and across a large and navigable stream, and that instead of running *near* to, ran directly away from the subscribing township, north to St. Joseph. And the position of plaintiff, in view of the object of the "aid act," and of the necessary and proper construction of that act, seems absurd, indeed, when it is further considered that in making this subscription the county court had to pass over two of the great commercial thoroughfares of the state, namely, the Missouri river, on which Lexington township borders, and the North Missouri R. R., both of which gave Lexington township the same and much greater facilities than could, by any act of imagination, be derived from the little road running between the little towns of Richmond and St. Joseph.

His Honor, the Judge, who tried this case below, in view of the law and all of the facts, used the following language in rendering judgment:

"*It will be observed that under the provisions of this law the railroad to which a subscription is authorized to be made must be 'building or proposing to build a railroad into, through, or*

*near such township.' The starting point of the railroad to which the subscription was made is from Richmond, on the opposite side of the Missouri river, nine miles away from the nearest point of Lexington township, or Lafayette county. The corporation organized to build that road, so far as the articles of association are concerned, never contemplated building 'into, through or near' Lexington township. Lexington township could therefore have no interest in subscribing to this road. It could derive no benefit from this road, which it did not already possess through the North Missouri Railroad unless it be an indirect connection with St. Joseph, too remote an object to be taken into account. In this it differs from the case in 1st Wallace, 291, cited by plaintiff's counsel, the object as viewed by the court in that case being to connect a distant point by way of a road already built. * * * * * * * * * * The township railroad law requires the road to run 'into, through, or near such township,' and unless it does so run there seems to be no authority in the township to subscribe. Richmond, the terminus of St. Louis and St. Joseph Railroad. is nine miles away from the nearest point to Lexington township, or Lafayette county, with a navigable river between them, cannot be said to be near said township or county, and therefore legal authority was wanting to make the subscription and issue the bonds. * * * * * * * * * For want of legal authority to issue the bonds the coupons do not constitute a legal indebtedness. Judgment will, therefore, be rendered for the defendant, vide printed record 45 and 46."*

The judgment of the trial court is fully sustained by the decision of this honorable court in the case of Van Hostrup vs. Madison City, 1 Wallace Rep., 295–297, wherein this court, on page 296, id., used the following express language: "*We think it quite clear a subscription to a road wholly unconnected with roads leading to a city would not be within its fair meaning and intent.*" The trial court is further sustained in its judgment by the analogous case of Sherrard vs. Lafayette county, decided by Judge Dillon in 1875, reported in the 2d vol. Cent. Law Journal, p.p. 347–348, wherein that celebrated jurist used the following language: "*The bond recites as the authority* under which it was issued, *the act*

incorporating the Louisiana and Missouri River Railroad, approved March 10th, 1859, and an amendment thereto, approved March 24th, 1868. The former act, creating said company, provided (section 35) as follows: Said company shall have power to mark out and to locate and construct a railroad from the city of Louisiana, in the county of Pike, by way of Bowling Green, in said county, to some suitable point on the North Missouri railroad, intersecting said road between the southern limits of the town of Wellsburg, in Montgomery county, and the northern limits of the town of Mexico, in Audrain county, thence to the Missouri river, to the most eligible point on a line the most suitable and advantageous.

By the 29th section it is provided, "*that it shall be lawful for the county court of any county in which any part of the route of said railroad may be, to subscribe to the stock of said company.*"

* * * * * * * * * * * *

"Defendant's answer sets up that Lafayette county is located *south* of the Missouri river, and not on the line of said railroad, as originally chartered. By its charter the route of the road was confined to the *north* of the river."

* * * * * * * * * * * *

"These bonds in suit are negotiable, and are in the hands of a purchaser for value, and it is now the well-settled law that where a municipal corporation has the power to subscribe stock anp issue its bonds in payment thereof, to aid in the construction of a railroad, no defense can successfully be made against such a purchaser, as against him the sole defense is the want of power. The question is thus reduced to the narrow limits, whether or not Lafayette county had the power to issue these bonds. If it had it must pay; but if it had not, plaintiff can not recover. It is stipulated and agreed herein that there was no power conferred by the original charter, and that Lafayette county is geographically located on the *south* side of the Missouri river."

"*We hold that the purchaser is bound to know whether the county making the stock subscription and issuing its bonds is a county in which any part of the route prescribed for the railroad lies. For if it matters not whether the*

county is within such limits, then Cole county or Dade county, 100 or 200 miles distant, might be held to have equal power under the charter."

* * * * * * * * * * * *

Several payments of interest have been made on these bonds from funds derived from taxation, but this can make no difference. In the recent Topeka and Iola cases the supreme court of the United States decides that want of power can not thus be cured. Such corporations may, by their acts, become estopped from defenses based on irregularities of their officers, but want of power is an inherited defect, not subject to estoppel in this manner."

Krekel J. concurs, judgment for defendant, 2nd Central Law Journal, pages 347 and 348.

In the case last above cited the bond recited that it was issued by virtue of the act, of March 10th, 1859, and the court held, that notwithstanding the recital in the bond, that it was issued by virtue of that act, yet the innocent purchaser must take notice at his peril, whether the county was one whose geographical location made the act applicable to it so as to authorize the subscription, and the reason is clearly good as given, that if because the bond recited that it was issued by virtue of the act of 1859 the innocent purchaser might rely on the recital, and hold the county bound on account of that recital, then "*Cole or Dade counties, 100 or 200 miles distant, might be held to have equal power under the charter.*"

If the plaintiff herein can recover, then any township in Cole or Dade counties, 100 or 200 miles distant, would be held bound, on bonds like these in suit, issued for any township in either of these counties to the St. Louis and St. Joseph Railroad Company. The principle of the Sherrard case is identical with that of the present case. It requires the purchaser to know at his peril whether the municipality making the stock subscription and issuing the bonds, is within the purview of the act which gives power to subscribe, and if the municipality is not fairly within the intendment of the act, the provisions of the act will not be enlarged by construction so as to make it include such municipality

The case of Van Hostrup vs. Madison City, 1 Wallace Rep., 295 and 297, is the only case upon which plaintiff in error relies.

But that case was fairly and properly distinguished from this in the decision of the learned judge who rendered the opinion herein. Van Hostrup vs. Madison City is not inimical to the position held by the defendant herein, and establishes the principle that the supreme court will look at the facts to see if the subscribing municipality does come fairly within the intendment of the law, and while upon an examination of the evidence in that case the supreme court decided that the *charter* of Madison did give the power, yet the court declared expressly (on page 296 of 1st Wallace, in the same case) the following doctrine :

"*We think it quite clear a subscription to a road wholly unconnected with roads leading to the city would not be within its fair meaning and intent.*"

In Van Hostrup vs. Madison (*supra*), wherein the court held, "that a subscription to a road in extension and prolongation of one leading *into* the city" was within the fair meaning of the act, it is well to consider that the law which granted the power in that case to subscribe was a clause in the charter of the city, in these words, "to take stock in any chartered company for making a road or *roads* to the said city." It was a special law for the benefit of Madison City alone, being a part of the charter of the city, and was not a part of a general act like the township railroad law. And, therefore, acts which the city did by virtue of its private charter would be construed more stringently against the city, and more liberally in favor of the innocent holder of bonds issued for the benefit of the city.

In the present case the law is a general statute, and the plaintiff mustat his peril see that his bonds come within the power given in that law. However, the Madison bonds were subscribed "to a road that lead directly to Madison and nowhere else," in the language of that case as stated. In this, however, as well observed, the bonds were subscribed and issued to a road that neither of itself, nor in connection with any other road, ran "into, through or near" Lexington township, but just the reverse thereof.

While innocent bondholders delight in knowing nothing to the discredit of any bond that may be found upon the market, even

though put there by bribery, as in the present case, yet there are some things which the law compels them to know, and things of which courts of the country take judicial notice without any evi dence whatever upon the point. The geographical subdivisions of the county and their positions to each other are embraced among these things.

Greenleaf on Evidence, vol. I., section 6, (of 12th Edition of Redfield) states the law to be :

"Courts also take notice of the territorial extent of the jurisdiction and sovereignty exercised *de facto* by their own government; and of the *local divisions* of their country, as into states, provinces, *counties, cities, towns, local parishes or the like*, so far as political government is concerned or affected, *and of the relative positions of such local division*;" and about the middle of said section 6, the author says :

"The courts of the United States, moreover, take judicial notice* * * * * * in an especial manner of all the laws and jurisprudence of the several states in which they exercise an original or appellate juristiction. The judges of the supreme court of the United States are, on this account, bound to take judicial notice of the *laws* and jurisprudence of all the states and territories. * * * * * In fine, courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction."

The supreme court of the United States, in Aspinwall vs. Commissioners, 22 Howard, page 377, (3rd volume of Miller's U. S. Supreme Court Rep., at bottom of page 379, and top of page 380), declares the law to be in regard to railroad subscriptions : "That the power, or authority, contained in the charter (of R. R. Co.), and out of which the right in question is claimed to arise is conferred upon the county, a public corporation or civil institution of government and upon public officers employed in administering its laws, *and the power or authority itself concern this body in its public political capacity.*"

And the United States supreme court has invariably held that a railroad is a public highway; out of many cases, reference will be

made to only two. "A railroad is a public highway. Being, so, and thus a road for public use, a state may impose a tax in furtherance of that use." Olcott vs. Supervisors, 16 Wallace, 678.

When a city charter authorized, in general terms, the city "*to borrow money for public purposes*, the same court held a railroad to be such and so decided. In this act it is clearly implied that cities have authority to subscribe for railroad stock and issue bonds in payment. Gelpecke vs. City of Dubuque, 1st Wallace, 220 and 221.

In Gibson vs. Stephens, 8th Howard, 384, the United States supreme court judicially recognized the usual route by which the products of the Mississippi valley found the way to market because the Mississippi river was a commercial highway.

The same doctrine would apply to all railways, they being held universally to be public highways, as above shown, and also to the Missouri, which is a navigable water of the United States, as set forth in finding of facts.

So we have it clearly established that in the matter of railroad subscriptions, the municipalities when making such subscriptions are concerned in a public political capacity, and that railways are public highways, of which the highest courts of the country take judicial cognizance, as respects subdivisions, relative positions of local divisions, extent and route. And finally upon this point a general and public statute of the state of Missouri, entitled "Of Counties and County Boundaries," in force at the time of the subscription and issuance of the bonds in question, contained this language in section 1: This state is divided into one hundred and fourteen counties by the names and designations following; north of the Missouri river (here giving the names of forty-four counties, among them Ray). South of the Missouri river, (here giving the names of seventy counties, including Lafayette), and then the same statute, by section 38, gives the precise boundaries of Ray county, and by section 78 the precise boundaries of Lafayette county. Thus by public act both counties are located with reference to the Missouri river, and also metes and bounds of each ascertained. See General Statutes of Missouri, (code 1865) sections 1,38, 78, of

chap. 34, pages 185, 193 and 203. And now can this innocent plaintiff be heard to say that he can disregard these same things and blindly refuse to see what the courts judicially recognize? As well might the murderer plead in avoidance of the law that he was ignorant of the criminal code of the state.

The reason why the courts notice these judicially, as stated in the concluding part of sec. 6, 1st vol. Greenleaf (*supra*), is that "the courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction." This section is quoted with approval in Brown, et al., vs. Piper, 91st U. S. Supreme Court Rep., p. 42.

There is no recital whatever contained in this bond that it is issued for and on behalf of Lexington or any other township in Lafayette county.

The bond, therefore, contains no *representation* by way of *recital* to estop the municipality from denying that the company to which it was issued was within the fair intent and meaning of the township aid act, building a road "*into, through or near*" Lexington township.

The failure of this bond to recite the fact that it was issued for and on behalf of any *township* distinguishes this case from Coloma vs. Eaves, 92 U. S., 484, and all other cases of that class relied upon by plaintiff in error.

The *absence* of such recital, we submit, brings this case within the principle of Buchanan vs. Litchfield, 102 U. S., 278.

The county court which issued the bonds sued on is not the agent of the township in any general sense, but is only clothed with a statutory power to do certain specific acts, which power is not conferred except under certain defined circumstances.

It is submitted that unless those circumstances exist the said court would have no power or jurisdiction in the matter.

The distinction is, that where a power already exists (as in the cases of county courts acting for counties, or the council or board of aldermen or trustees of a town or city, acting for such corporations) a restriction put upon that power by law is concluded by law not to exist so as affect *bona fide* holders of the bonds of

such corporations, issued by such tribunals, where the recitals of said bonds are that the bonds were issued in pursuance of said law; for these are matters generally coming under the exclusive management and control of such tribunals, and are especially within their knowledge, and the determination of which is left by law to their judgment.

It will be found that all of the cases relied on by plaintiff have been decided upon points of irregularity in or wrongful abuse of the power conferred on such tribunals by law, but not one can be found where a bond has been held good where the power to issue it was wanting.

These cases have been where there was some informality in the election or petition, or some act that came directly under the supervision of the tribunal issuing the bonds.

It is submitted, that while the recitals in the bonds are conclusive as to the manner of the execution of the power, and of the compliance with the forms prescribed by law, and of the state of affairs of the corporation of which these tribunals are the agents, and over which they have control, yet such recitals are not conclusive of jurisdictional facts existing outside of and not under the control, management or supervision of the said tribunals.

The legislature gave to the county court the power to do certain acts in a certain manner, i. e., to order an election upon petition of tax-payers; to issue bonds when two-thirds of the voters voting at the election voted therefor. These were matters peculiarly within the power of the court, under their control and supervision, and the recitals in the bonds, if the court should hold that there are such recitals, that they were issued in pursuance of the said act of the legislature, would be conclusive. But the legislature conferred this power only in certain cases, viz: "Whenever a railroad company is building or proposing to build a railroad into, through or near the township." Until such was the case the court had no power to act in the matter at all; even to entertain a petition or order an election. The court had no general agency. It became an agent only under such circumstances. They were jurisdictional facts, else why were the words used at all? Remember that this was

not a restriction of a power already granted or before inherent. They defined the circumstances and granted the power in such cases only. The power attached only when these facts existed, and they were joined as conditions to the grant of power.

The power to issue the bonds sued on depended on something outside of any act or proceeding in or before the said county court, and it was a patent, unchangable, notorious fact, which is believed to have been shown above, to be such as the courts of the land take judicial notice of and which all persons are presumed to know.

If the facts relied on were jurisdictional facts their absence would undoubtedly leave the county court without power to issue the bonds. Then would it not be absurd to say that the mere recitals in the bonds themselves conferred the power to do so on the tribunal issuing them? If such was the case, no matter to what extent a corrupt county court might carry its nefarious practices, the tax-payers would be without remedy when their bonds came into the hands of *bona fide* holders, and experience has shown that they always get there in spite of every effort on the part of the tax-payers.

It has been universally held that the question of power and jurisdiction of every tribunal is always open to review.

The question of fact, i. e. that the railroad company to which these bonds were issued was not, at the time of their issuance, building or proposing to build a railroad into, through or near the township on whose behalf the bonds are claimed to have been issued, was found by the trial court, and this question we submit decides this case.

The conclusion would seem inevitable that the bondholders in law had notice that the county court acted without authority of the township railroad law at the time it made this subscription to the St. Louis & St. Joseph railroad company, and the fact that afterwards another company was incorporated, and built a road from Richmond to the north bank of theriver, is wholly immaterial in this case; because that road was not in existence at the time of the subscription, and there is no pretense that when these bonds were subscribed

another company would be organized to make the nine mile road. If the subscription was void for want of power to make it in the first place, this event of the organization of the St. Louis & St. Joseph railroad, southern division, and the building of the nine miles could not render that act valid and binding, which was at first wholly void for want of statutory power in the county court. It stands upon the same footing as the payment of interest for several years upon these bonds, which fact the United States supreme court, in the Iola and Topeka cases, above referred to, in Sherrard case, *supra*, and in divers others, has held to be wholly immaterial where the municipality lacked legal authority to make the subscription in the first instance.

II.

Another and second reason why the plaintiff should not recover is that the bond in suit is not a *township* bond. The township aid act, of March, 1868, authorized only township bonds. This suit is based upon a county bond, and there is no law whatever authorizing the county to issue such bonds. Lafayette county contains *nine* municipal townships, of which fact the court will take official notice. Brown, et al., vs. Piper, 91 U. S., 42, and other athorities above cited.

But yet there is no recital whatever that this bond is issued for or on behalf of any one of them, nor that it was authorized by the vote of any one of them. On the contrary, so far as the recital in the bond is concerned, it is not only a straight county bond, but was also authorized by the people of the *county*, instead of by the *township*, and the holder is bound by the recitals.

But as the county had no right to issue bonds except on *behalf of townships* by the "aid act," the holder is chargable with notice of the want of legal authority for their issue.

Ogden vs. County af Daviess, 102, U. S., 634.

In the hundreds of suits upon bonds issued by Missouri townships, there has never been any case based upon bonds which did not recite the fact that they were issued on behalf of some township.

For these reasons it is respectfully submitted that the judgment of the circuit court should be affirmed.

ALEX. GRAVES,
WM. YOUNG,
For Defendant in Error.